

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.206 of 2007

Date of Decision: 16.11.2007

M/s Idma Laboratories Ltd.

...Appellant

Vs.

M/s Blue Star Ltd. Sahas

...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Dinesh Kumar Gupta, Advocate,
 for the appellant.

Vinod K.Sharma, J. (Oral)

The plaintiff had filed a suit for recovery on the plea that machinery supplied by the defendant respondent was defective and not capable for being used for the purpose for which it was purchased. The machinery was purchased at the rate of Rs.2,66,699.80P. (Rupees two lacs sixty six thousand six hundred ninety nine and eighty paise only.

The suit was contested by the defendant and their liability to refund the amount was disputed.

The learned trial court held that as the machine was proved to be defective and was of no use, the plaintiff-appellant was entitled to refund of the amount along with interest thereon and accordingly passed a decree for Rs.5,00,780/- i.e. Rs.2,66,699.80P as principal plus

Rs.2,34,080.22P as interest up to 30.4.1997 and future interest at the rate of 9 per cent per annum was also awarded on the principal amount.

In appeal learned lower appellate court modified the decree and it was held that the plaintiff was only entitled to refund of the principle amount of Rs.2,66,699.80P along with interest at the rate of 9 per cent from the date of institution of the suit till realisation of the whole amount with proportionate costs thereon.

Learned counsel appearing on behalf of the appellant has challenged the modification of the decree by the learned lower appellate court primarily on the ground that the appellant had led evidence that the machine could not be used and in fact the plaintiff had to order new machine for their use, therefore, learned lower appellate court fell in error in modifying the judgment and decree, the appellant was entitled to interest on the amount as claimed.

This plea of the learned counsel for the appellant cannot be accepted as admittedly it was the case of sale and purchase where there was no stipulation regarding interest to be paid inter se between the parties. The court in these circumstances could grant interest under the Interest Act on coming to the conclusion that any refund was due. Learned lower appellate court, therefore found that from the date of institution of the suit by the plaintiff, he was entitled to refund of the amount as the machine did not function and granted interest thereon at the rate of 9 per cent per annum.

The order passed by the learned lower appellate court, thus, cannot be said to be in any way illegal or in violation of any stipulation in the contract or provisions of any statute, which may call for interference by

this court in regular second appeal.

No question of law much less substantial question of law arises in the present appeal for consideration of this court.

Dismissed in limine.

16.11.2007
rp

(Vinod K.Sharma)
Judge